

### REMARKS

Claims 12-24 are pending in the present application. Claims 12-24 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 12, 14-16 and 20-23 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Kuschel et al., WO 99/34324 ("Kuschel '324"). Claims 13 and 17-19 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Kuschel '324, as applied to claim 12, in view of Kuschel et al., DE-C-44 35 170 ("Kuschel '170"). Claim 24 was rejected under 35 U.S.C. §103 (a) as being unpatentable over Kuschel '324, in view of Mark, U.S. Patent No. 5,583,933.

Claim 23 has been amended.

#### Rejection under 35 U.S.C. §112 to claims 12-24

Claims 12-24 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. In claims 12 and 20, the Examiner has indicated it is unclear what constitutes a "clacking noise." In claim 23, the Examiner has indicated there is insufficient antecedent basis for the phrase "the element."

Regarding the phrase "clacking noise" recited in claims 12 and 20, it is respectfully submitted that the phrase "clacking noise" is definite and clear. As recited in claims 12 and 20, the clacking noise is produced when at least one of a tongue, a plate, and a curved surface folds "upon an overcoming of an initial resistance, the folding generating the clacking noise." The specification further elaborates on the clacking noise:

However, it is particularly simple and, therefore, advantageous, if the means for generating the signal features a tongue and/or a curved surface which is attached onto the medium in such a manner that it/they can be acted upon by a user pressing with a finger against a resistance, and that it/they emit(s) the signal ("clack") when the resistance is overcome. Devices of that kind are known as toys (frog clickers). After the clacking threshold is overcome, the means springs back to the initial position.  
Specification at paragraph [0011].

Thus it is clear that the "clacking noise" is the noise made when the tongue, plate, or curved surface folds upon overcoming an initial resistance, as in the common "frog clicker" toys. It is respectfully submitted that such frog clicker toys and the clacking

noise they produce are definite and clear to those of skill in the art. Further, Webster's Third New International Dictionary defines "clack" as "a sharp or abrupt noise...". Webster's Third New International Dictionary 1993. A copy of the relevant page of this dictionary is submitted herewith.

It is respectfully submitted that the meaning of the phrase "clacking noise" is clear and definite from the language of claims 12 and 20 themselves, as well as from the specification, and, if necessary, from the dictionary definition.

Regarding claim 23, this claim has been amended to remove the recitation to an "element" and now properly refers to the "card" recited therein. Support for the amendment may be found, for example, in the specification at paragraph [0014]. It is respectfully submitted that no new matter has been added.

Withdrawal of the rejection of claims 12-24 under 35 U.S.C. §112, second paragraph, is hereby respectfully requested.

Rejection under 35 U.S.C. §103 (a) to claims 12, 14-16 and 20-23

Claims 12, 14-16 and 20-23 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Kuschel et al., WO 99/34324 ("Kuschel '324").

Kuschel '324 describes a device for transmitting acoustic signals in which a mechanical profile on the surface of a plastic card causes an edge of a scanning cam to rattle when the profile is drawn across it. See Abstract.

Independent claims 12 and 20 recite an identification device including a signal generator device, "the signal generator device including at least one of a tongue, a plate, and a curved surface configured for folding upon an overcoming of an initial resistance, the folding generating the clacking noise" and "a frequency spectrum of the clacking noise encoding an information." It is respectfully submitted that Kuschel '324 does not teach or suggest these features of claims 12 and 20. In contrast, Kuschel '324 describes a device in which one edge of a cam 6/flexible prong 5 rattles on a profile 4 of a card 1 as the profile is drawn past the cam. See Abstract. Kuschel '324 does not teach folding to generate a

clacking noise. It is respectfully submitted that “rattling” of the cam edge due to the card profile in Kuschel ‘324 is completely different than the “clacking” due to folding of the claimed device, as recited in claims 12 and 20. These two ways of producing sound are not the same, and the sounds produced are completely different. Kuschel ‘324 thus does not teach or suggest encoding information in the frequency spectrum of the clacking noise, as recited in claims 12 and 20.

Moreover, Kuschel ‘324 shows a relatively complicated two-part apparatus including a card 1 and a control unit 2 both of which are needed to generate information-encoded sounds. In the claimed invention, on the other hand, the simple folding of the tongue/plate/curved surface of the signal generator provides the information-encoded sounds. No additional device, such as the card 1 provided with a certain profile 4, as in Kuschel ‘324, is required. Furthermore, the tongue/plate/curved surface of the claimed invention can be easily shaped by the user so as to establish a unique encoding and thereby personalize the identification device. For example, a user could easily initialize and personalize a new identification device by punching or pressing a depression into the tongue. See specification at paragraph [0015]. No patterned profile, as with the Kuschel ‘324 device, is required. As described in the present specification, the claimed device has numerous other advantages, including, among others: 1) a user only need press the tongue/plate/curved surface with a finger to produce the encoded sound; 2) the encoding of the information can be easily changed by changing the shape or suspension of the tongue/plate/curved surface; 3) the “frog clicker” (tongue/plate/curved surface clacking by folding) is easily and inexpensively implemented and is robust and durable. See Specification as paragraphs [0011] – [0014]. It is not apparent that Kuschel ‘324 provides these advantages.

For at least the reasons stated above, withdrawal of the rejection of independent claims 12 and 20, as well as dependent claims 14-16 and 21-23, under 35 U.S.C. §103 (a) based on Kuschel ‘324 is hereby respectfully requested.

Rejection under 35 U.S.C. §103 (a) to claims 13 and 17-19

Claims 13 and 17-19 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Kuschel ‘324, as applied to claim 12 in view of Kuschel et al., DE-C-44 35 170 (“Kuschel ‘170”).

Kuschel '170 does not teach or suggest an identification device including a signal generator device, "the signal generator device including at least one of a tongue, a plate, and a curved surface configured for folding upon an overcoming of an initial resistance, the folding generating the clacking noise" and "a frequency spectrum of the clacking noise encoding an information," as recited in claim 12. These features are also not taught or suggested by Kuschel '324, as discussed above. Because both Kuschel '324 and Kuschel '170 are missing at least these features of claim 12, it is respectfully submitted that a combination of these two references would be missing these features. Claims 13 and 17-19 depend from and includes all the limitations of independent claim 12. Therefore, a combination of Kuschel '324 and Kuschel '170 would also not provide all the features of dependent claims 13 and 17-19.

For at least the reasons stated above, withdrawal of the rejection of dependent claims 13 and 17-19 under 35 U.S.C. §103 (a) based on Kuschel '324, as applied to claim 12, in view of Kuschel '170, is hereby respectfully requested.

Rejection under 35 U.S.C. §103 (a) to claim 24

Claim 24 was rejected under 35 U.S.C. §103 (a) as being unpatentable over Kuschel '324, in view of Mark, U.S. Patent No. 5,583,933.

Mark does not teach or suggest an identification device including a signal generator device, "the signal generator device including at least one of a tongue, a plate, and a curved surface configured for folding upon an overcoming of an initial resistance, the folding generating the clacking noise" and "a frequency spectrum of the clacking noise encoding an information," as recited in claim 20. These features are also not taught or suggested by Kuschel '324, as discussed above. Because both Kuschel '324 and Mark are missing at least these features of claim 20, it is respectfully submitted that a combination of these two references would be missing these features. Claim 24 depends from and includes all the limitations of independent claim 20. Therefore, a combination of Kuschel '324 and Mark would also not provide all the features of dependent claim 24.

For at least the reasons stated above, withdrawal of the rejection of dependent claim 24 under 35 U.S.C. §103 (a) based on Kuschel '324, in view of Mark, U.S. Patent No. 5,583,933, is hereby respectfully requested.

CONCLUSION

It is respectfully submitted that the application is now in condition for allowance.

Respectfully submitted,

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